

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON**

JEFF SASS,

Plaintiff,

v.

**STATE OF OREGON DEPARTMENT OF
CORRECTIONS,**

Defendant.

Case No. 3:17-cv-0983-JE

ORDER

Michael H. Simon, District Judge.

United States Magistrate Judge John Jelderks issued Findings and Recommendation in this case on December 12, 2017. ECF 12. Judge Jelderks recommended that Defendant's motion to dismiss (ECF 8) be granted without prejudice.

Under the Federal Magistrates Act ("Act"), the court may "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate." 28 U.S.C.

§ 636(b)(1). If a party files objections to a magistrate's findings and recommendations, "the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made." *Id.*; Fed. R. Civ. P. 72(b)(3).

If no party objects, the Act does not prescribe any standard of review. *See Thomas v. Arn*, 474 U.S. 140, 152 (1985) (“There is no indication that Congress, in enacting [the Act], intended to require a district judge to review a magistrate’s report to which no objections are filed.”); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc) (holding that the court must review de novo magistrate’s findings and recommendations if objection is made, “but not otherwise”).

Although review is not required in the absence of objections, the Act “does not preclude further review by the district judge[] *sua sponte* . . . under a *de novo* or any other standard.” *Thomas*, 474 U.S. at 154. Indeed, the Advisory Committee Notes to Fed. R. Civ. P. 72(b) recommend that “[w]hen no timely objection is filed,” the court review the magistrate’s findings and recommendations for “clear error on the face of the record.”

No party having made objections, this Court follows the recommendation of the Advisory Committee and reviews Judge Jelderks’ Findings and Recommendation for clear error on the face of the record. No such error is apparent. Accordingly, the Court **ADOPTS** Judge Jelderks’ Findings and Recommendation, ECF 12. Defendants’ motion to dismiss (ECF 8) is GRANTED, and Plaintiff’s case is dismissed, without prejudice to Plaintiff’s right to bring a habeas corpus case pertaining to the calculation of his sentence once he has exhausted his available state-court remedies.

IT IS SO ORDERED.

DATED this 22nd day of January, 2018.

/s/ Michael H. Simon
Michael H. Simon
United States District Judge